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| 7265 7590 08/11/2008 MICHAELSON & ASSOCIATES P.O. BOX 8489 RED BANK, NJ 07701-8489 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,001

Applicant(s)

LAVERMAN ET AL.

Examiner

ALINA SCHILLER

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's new claim 16 is indefinite because the parallelogram construction only exists when the lip is in a specific extended position, as seen in Applicant's Figs. 3 and 4, "A" or upper position. Moreover, Fig. 4 illustrates that when the lip is in the middle or lower positions, the construction claimed is not a parallelogram.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 17, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Artzberger 3,997,932 in view of FR 1,487,436.

Regarding claim 16 as best understood, Artzberger discloses a dock leveler (as seen in Figs. 3 and 4) comprising:

a deck plate (3) having a deck upper surface and pivotably connectible with a platform (as seen in Figs. 3 and 4);

a lip (8) having a lip upper surface, the lip upper surface and the deck upper surface forming at least part of a transport surface (Figs. 3, 4);

a lip hinge construction (9) with a pivot element which pivotably connects an end of the lip and an end of the deck plate, wherein the lip upper surface, through the pivot element, is pivotable below a position in line with the deck upper surface (as seen in Figs. 3 and 4);

and a transmission member (14) for coupling a pivotal movement of the deck plate to a pivotal movement of the lip, the transmission element and the deck plate constituting a parallelogram construction such that the transmission member maintains the lip upper surface at a substantially fixed angle with respect to the platform (as seen in Figs. 3 and 4). The examiner notes that the lip has been treated as substantially fixed in a position at any given moment, such as during use or storage.

However, Artzberger fails to disclose that the lip upper surface is pivotable below a position in line with the deck upper surface. FR '436 teaches that it is well known to have a lip with the upper surface being pivotable both below and above to a position in line with the deck upper surface (Fig. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dock leveler of Artzberger to have the lip rotatable also below a position in line with the deck upper surface, as taught by FR '436, since this structure/configuration is well known in the art and provides a more versatile deck to lip relationship.

Regarding claim 17 as best understood, Artzberger discloses that the transmission member comprises a stiff element which is pivotably connected with the lip and the platform (Figs. 3 and 4).

Regarding claim 30 as best understood, Artzberger discloses an extension hinge construction, which is connected with an end of the deck plate remote from the lip, and is connectible with an edge of the platform (as clearly seen in Figs. 3 and 4, left).

Regarding claim 31 as best understood, Artzberger discloses that the extension hinge construction comprises:

the deck plate (as seen in Figs. 3 and 4);

a supporting device (6) for operatively supporting the end of the deck plate, remote from the lip, on the platform edge; and

a rotation element supported by the supporting device and situated near the platform edge, the end of the deck plate remote from the lip being at least partly supported by

the rotation element, and the deck plate being movable relative to the rotation element (as seen in Figs. 3 and 4).

Claims 16-19 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn et al 2002/0124491 in view of FR 1,487,436.

Regarding claim 16 as best understood, Hahn discloses a dock leveler (as seen in Fig. 1) comprising:

a deck plate (16) having a deck upper surface (58) and pivotably connectible with a platform (10);

a lip (18) having a lip upper surface, the lip upper surface and the deck upper surface forming at least part of a transport surface (Fig. 1);

a lip hinge construction (39) with a pivot element which pivotably connects an end of the lip and an end of the deck plate, wherein the lip upper surface, through the pivot element, is pivotable below a position in line with the deck upper surface (as seen in Fig. 1);

and a transmission member (50) for coupling a pivotal movement of the deck plate to a pivotal movement of the lip, the transmission element and the deck plate constituting a parallelogram construction such that the transmission member maintains the lip upper surface at a substantially fixed angle with respect to the platform (as seen in Fig. 1). The examiner notes that the lip has been treated as substantially fixed in a position at any given moment, such as during use or storage.

However, Hahn fails to disclose that the lip upper surface is pivotable below a position in line with the deck upper surface. See discussion for claim 16 above, applying an alternate rejection.

Regarding claim 17 as best understood, Hahn discloses that the transmission member comprises a stiff element which is pivotably connected with the lip and the platform (Fig. 1).

Regarding claims 18 and 19 as best understood, Hahn discloses that the stiff element comprises a variable length element for pivoting a front edge of the lip relative to a rear edge of the lip connected with the pivot element, wherein the variable length element comprises a pneumatic or hydraulic cylinder ([0038], Fig. 1).

Regarding claim 30 as best understood, Hahn discloses an extension hinge construction, which is connected with an end of the deck plate remote from the lip, and is connectible with an edge of the platform (Fig. 1).

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Artzberger 3,997,932 in view of FR 1,487,436, as applied to claim 17 above, and further in view of Merrick et al 3,475,778.

Regarding claim 18 as best understood, the combination above discloses an apparatus as previously set forth, but fails to disclose that the stiff element comprises a variable length element for pivoting a front edge of the lip relative to a rear edge of the lip connected with the pivot element. Merrick teaches that it is well known in the art to have a transmission member including a stiff element comprising an element (30) of variable length (col. 3, lines 74-75; col. 4, lines 1-7). It would have been obvious to one

having ordinary skill in the art at the time the invention was made to modify the apparatus of the combination above to have the stiff element comprising a variable length element, as taught by Merrick, as an alternate structure well known in the art.

The examiner notes that the phrase “for pivoting a front edge of the lip relative to the rear edge of the lip connected with the pivot element” is for intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. It is the examiner position that the apparatus of the combination above is capable of meeting the limitation in claim 18.

Regarding claim 19 as best understood, the combination above discloses that the variable length element can comprise a pneumatic or hydraulic cylinder (col. 7, lines 71-75 of Merrick).

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Artzberger 3,997,932 in view of FR 1,487,436, as applied to claim 16 above, and further in view of Muhl et al 7,216,391.

Regarding claim 20 as best understood, the combination above discloses a dock leveler as previously set forth, but fails to disclose that the pivot element has an upper surface which is contiguous to both the lip upper surface and the deck upper surface. Muhl teaches that it is well known to have a pivot element with an upper surface contiguous to the two surfaces of the components, which pivot relative to the pivot element (as seen in Fig. 11). It would have been obvious to one having ordinary skill in

the art at the time the invention was made to modify the dock leveler of the combination above to have the pivot element having an upper surface which is contiguous to both the lip upper surface and the deck upper surface, as taught by Muhl, in order to reduce vibration and noise due to gaps between components.

Regarding claim 21 as best understood, Artzberger discloses that the lip upper surface is at least partly moved about a rotation axis (as seen in Figs. 3 and 4) and the lip and the deck plate, in a coupled condition, are rotatable relative to each other about the rotation axis (as seen in Figs. 3 and 4).

Regarding claim 22 as best understood, the combination above results in that the lip upper surface forms at least a portion of an outer surface of a cylinder, and a longitudinal axis of the cylinder coincides with the rotation axis (as seen in Figs. 3 and 4 of Artzberger; and Figs 6-9 of Muhl).

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn et al 2002/0124491 in view of FR 1,487,436, as applied to claim 16 above, and further in view of Muhl et al 7,216,391.

Regarding claim 20 as best understood, the combination above discloses a dock leveler as previously set forth, but fails to disclose that the pivot element has an upper surface which is contiguous to both the lip upper surface and the deck upper surface. See discussion for the alternate rejection of claim 20 above.

Regarding claim 21 as best understood, Hahn discloses that the lip upper surface is at least partly moved about a rotation axis and the lip and the deck plate, in a

coupled condition, are rotatable relative to each other about the rotation axis (as seen in Fig. 1).

Regarding claim 22 as best understood, the combination above results in that the lip upper surface forms at least a portion of an outer surface of a cylinder, and a longitudinal axis of the cylinder coincides with the rotation axis (Figs 6-9 of Muhl).

Claims 23-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Artzberger 3,997,932 in view of FR 1,487,436 and Muhl et al 7,216,391, as applied to claims 20-22 above, and further in view of Berends EP 1,264,790.

Regarding claims 23-25 as best understood, the combination above discloses a dock leveler as previously set forth, but fails to disclose that the pivot element comprises a hinge element of elastically deformable material. Berends teaches that pivot elements comprising a hinge element of elastically deformable material ([0018], lines 35-37, [0021], lines 1-5) are well known in the art for their ability to be used to selectively adjust the damping properties and spring constant of the hinge ([0018], lines 40-44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dock leveler of the combination above to have the pivot element comprising a hinge element of elastically deformable material, similar to that of Berends, since this structure is well known in the art for the ability to selectively adjust the damping properties and spring constant of the hinge, as taught by Berends.

Regarding claim 28 as best understood, Berends discloses that the lip upper surface slopes down from the deck plate to a front end of the lip and, in operation, is

held at an angle relative to the platform, the angle being less than approximately 2 degrees (as seen in Fig. 1).

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn et al 2002/0124491 in view of FR 1,487,436 and Muhl et al 7,216,391, as applied to claims 20-22 above, and further in view of Berends EP 1,264,790.

Regarding claims 23-25 as best understood, the combination above discloses a dock leveler as previously set forth, but fails to disclose that the pivot element comprises a hinge element of elastically deformable material. See discussion for the alternate rejection of claims 23-25 above.

Allowable Subject Matter

3. **Claims 26, 27 and 29 would appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.**

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALINA SCHILLER whose telephone number is (571)270-3088. The examiner can normally be reached on Mon-Fri, 7:30AM-4:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571)272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas B Will/
Supervisory Patent Examiner
Art Unit 3671

AS
08/06/08